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8 Attorney for Defendants Joytoto USA, Inc.

9 and Joyon Entertainment, Inc., kna Pollex, Inc.

10 IN THE UNITED STATES DISTRICT COURT

11 FOR THE DISTRICT OF ARIZONA

12 CONSUMER PROTECTION CORPORATION, etc.,) No. CIV 08-1983 PHX-JAT

13 Plaintiff,) ANSWER

14 vs.)

15 NEO-TECH NEWS, etc., et al.,)

16 Defendants.)

17 Defendant Pollex, Inc. (“Pollex”), formerly known as Joytoto USA, Inc., by and
18 through it’s undersigned counsel, for its Answer to Plaintiff Consumer Protection
19 Corporation’s (“Plaintiff”) Complaint, admits, denies and alleges as follows:

20 1. Denies knowledge or information sufficient to form a belief as to the truth
21 of the allegations contained in Paragraph 1 of the Complaint.

22 2. Denies knowledge or information sufficient to form a belief as to the truth
23 of the allegations contained in Paragraph 2 of the Complaint.

24 3. Denies the allegations contained in Paragraph 3 of the Complaint, except
25 admits that Pollex, was a Nevada Corporation whose stock traded publicly in the United
26 States over the counter securities market under the symbol OTC BB: JYTO.

27 4. Denies knowledge or information sufficient to form a belief as to the truth
28 of the allegations contained in Paragraph 4 of the Complaint.

29 5. Denies the allegations contained in Paragraph 5 of the Complaint.

30 6. Denies the allegations contained in Paragraph 6 of the Complaint.

31 7. Denies the allegations contained in Paragraph 7 of the Complaint.

32 8. Denies the allegations contained in Paragraph 8 of the Complaint.

1 9. Repeats, realleges, and reaffirms each and all of the above Paragraphs as if
2 set forth fully herein.

3 10. Denies the allegations contained in Paragraph 10 of the Complaint.

4 11. Denies the allegations contained in Paragraph 11 of the Complaint.

5 12. Denies the allegations contained in Paragraph 12 of the Complaint.

6 13. Denies the allegations contained in Paragraph 13 of the Complaint.

7 14. Denies the allegations contained in Paragraph 14 of the Complaint.

8 15. Denies the allegations contained in Paragraph 15 of the Complaint.

9 16. Denies the allegations contained in Paragraph 16 of the Complaint.

10 17. Denies the allegations contained in Paragraph 17 of the Complaint.

11 18. Denies the allegations contained in Paragraph 18 of the Complaint.

12 19. Denies the allegations contained in Paragraph 19 of the Complaint.

13 20. Denies the allegations contained in Paragraph 20 of the Complaint.

14 21. Denies the allegations contained in Paragraph 21 of the Complaint.

15 22. Denies knowledge or information sufficient to form a belief as to the truth
16 of the allegations contained in Paragraph 22 of the Complaint, and respectfully refers the
17 Court to the referenced House Report.

18 23. Denies knowledge or information sufficient to form a belief as to the truth
19 of the allegations contained in Paragraph 23 of the Complaint, and respectfully refers the
20 Court to the referenced Senate Report.

21 24. Denies the allegations contained in Paragraph 24 of the Complaint.

22 25. Denies the allegations contained in Paragraph 25 of the Complaint.

23 26. Denies the allegations contained in Paragraph 26 of the Complaint.

24 27. Denies the allegations contained in Paragraph 27 of the Complaint.

25 28. Denies the allegations contained in Paragraph 28 of the Complaint.

26 29. Denies the allegations contained in Paragraph 29 of the Complaint.

27 30. Denies the allegations contained in Paragraph 30 of the Complaint.

28 31. Denies the allegations contained in Paragraph 31 of the Complaint.

- 1 32. Denies the allegations contained in Paragraph 32 of the Complaint.
- 2 33. Repeats and realleges each and all of the above Paragraphs as if set forth
- 3 fully herein.
- 4 34. Denies the allegations contained in Paragraph 34 of the Complaint.
- 5 35. Denies the allegations contained in Paragraph 35 of the Complaint.
- 6 36. Denies knowledge or information sufficient to form a belief as to the truth
- 7 of the allegations contained in Paragraph 36 of the Complaint.
- 8 37. Denies knowledge or information sufficient to form a belief as to the truth
- 9 of the allegations contained in Paragraph 37 of the Complaint.
- 10 38. Denies the allegations contained in Paragraph 38 of the Complaint.
- 11 39. Denies the allegations contained in Paragraph 39 of the Complaint.
- 12 40. Denies the allegations contained in Paragraph 40 of the Complaint.

COUNT ONE

(Violation of the Telephone Consumer Protection Act)

- 15 41. Repeats, realleges, and reaffirms each and all of the above Paragraphs as if
- 16 set forth fully herein.
- 17 42. Denies the allegations contained in Paragraph 42 of the Complaint.
- 18 43. Denies the allegations contained in Paragraph 43 of the Complaint.
- 19 44. Denies the allegations contained in Paragraph 44 of the Complaint.
- 20 45. Denies the allegations contained in Paragraph 45 of the Complaint.
- 21 46. Denies the allegations contained in Paragraph 46 of the Complaint.

COUNT TWO

(Declaratory Judgment)

- 24 47. Repeats, realleges, and reaffirms each and all of the above Paragraphs as if
- 25 set forth fully herein.
- 26 48. Denies knowledge or information sufficient to form a belief as to the truth
- 27 of the allegations contained in Paragraph 48 of the Complaint and respectfully refers all
- 28 questions and conclusions of law to the Honorable Court.

- 1 49. Denies the allegations contained in Paragraph 49 of the Complaint.
- 2 50. Denies the allegations contained in Paragraph 50 of the Complaint.
- 3 51. Denies the allegations contained in Paragraph 51 of the Complaint.
- 4 52. Denies the allegations contained in Paragraph 52 of the Complaint.
- 5 53. Denies the allegations contained in Paragraph 53 of the Complaint.

6 **COUNT THREE**

7 **(Civil Conspiracy)**

8 54. Repeats, realleges, and reaffirms each and all of the above Paragraphs as if
9 set forth fully herein.

- 10 55. Denies the allegations contained in Paragraph 55 of the Complaint.
- 11 56. Denies the allegations contained in Paragraph 56 of the Complaint.
- 12 57. Denies the allegations contained in Paragraph 57 of the Complaint.
- 13 58. Denies the allegations contained in Paragraph 58 of the Complaint.

14 **COUNT FOUR**

15 **(Aiding and Abetting)**

16 59. Repeats, realleges, and reaffirms each and all of the above Paragraphs as if
17 set forth fully herein.

- 18 60. Denies the allegations contained in Paragraph 60 of the Complaint.
- 19 61. Denies the allegations contained in Paragraph 61 of the Complaint.
- 20 62. Denies the allegations contained in Paragraph 62 of the Complaint.
- 21 63. Denies the allegations contained in Paragraph 63 of the Complaint.

22 **REQUEST FOR TRIAL BY JURY**

23 64. Pollex requests a trial by jury on all issues triable by a jury.

24 **AFFIRMATIVE DEFENSES**

25 **AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

26 Plaintiff's claims are barred, in whole or in part, for failure to state a claim.

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AS AND FOR A SECOND AFFIRMATIVE DEFENSE

Plaintiff is estopped and barred by its own conduct from pursuing the claims set forth in the Complaint.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, were caused by their own wrongful acts and conduct.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff has not sustained injury or damage as a result of the matters alleged in the Complaint.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate damages, if any.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff's damages, if any, were caused solely by the conduct of third parties not under Pollex's control.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

Pollex did not violate any provisions of the Telephone Consumer Protection Act (TCPA).

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

Pollex did not engage in a civil conspiracy.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

Pollex did not aid and abet the commission of any violation of the TCPA.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

Pollex did not aid and abet a civil conspiracy.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims for punitive damages violate Pollex's procedural Due Process rights under the Fourteenth Amendment to the United States Constitution and Article II, § 4 of the Arizona Constitution.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims for punitive damages violate Pollex's rights to protection from excess fines and penalties as provided by the Eighth Amendment to the United States Constitution as well as its rights to substantive due process under the Fifth and Fourteenth Amendments to the United States Constitution.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

The relief sought is contrary to the public policy of the State of Arizona and the United States.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

10 Plaintiff's claims are barred by strong federal and state public policy prohibiting
11 one from benefitting from criminal, wrongful and illegal conduct.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

13 Plaintiff's Class Action claims are barred because the proposed Class fails to
14 satisfy the requirements of Ariz. R. Civ. P 23(a) and Fed. R. Civ. Proc. 23(a).

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

16 Plaintiff's Class Action claims are barred because the proposed class fails to
17 satisfy the requirements of Ariz. R. Civ. P 23(a) and Fed. R. Civ. Proc. 23(a) and
18 Plaintiff's counsel is not an adequate class counsel as required under Fed. R. Civ. Proc.
19 23(g).

AS AND FOR A EIGHTEENTH AFFIRMATIVE DEFENSE

21 Pollex reserves the right to amend this Answer at a later time to assert any matter
22 constituting an avoidance or affirmative defense including, without limitation, those
23 matters set forth in Fed. R. Civ. Proc. 8(c), as discovery shows to be applicable.

24 **WHEREFORE**, Pollex, having fully answered Plaintiff's Complaint, respectfully
25 requests:

26 a. That this Court dismiss Plaintiff's Complaint with Prejudice;
27 b. That Pollex recover its costs and expenses incurred in this action, including
28 reasonable attorneys' fees; and

1 c. That Pollex be awarded such other and further relief as this Court deems
2 just and proper.

3 DATED this 24th day of July, 2009.

4 **LAW OFFICES OF ARMAND SALESE, PLLC**

5 /S/Armand Salese

6 **Armand Salese**

7 Attorney for Defendants Joytoto, kna Pollex

8 I certify that I electronically
9 transmitted the foregoing
document to the Clerk's Office
10 using the CM/ECF System
on July 24, 2009.

11 /S/Vicki Adams

12 Vicki Adams

13 Assistant to Armand Salese

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